

REMARKS

[0004] Applicant respectfully requests entry of the following remarks and reconsideration of the subject application. Applicant respectfully requests entry of the amendments herein. The remarks and amendments should be entered under 37 CFR. § 1.116 as they place the application in better form for appeal, or for resolution on the merits.

[0005] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-39 and 44-54 are presently pending. Claims amended herein are: 1-23, 25, 29-39, and 44-53. Claims withdrawn or cancelled herein are: 40-43. New claims added herein are: 54.

Statement of Substance of Telephone Interview

[0006] Examiner Vo graciously talked with me—the undersigned representative for the Applicant— on 24 April 2008. Applicant greatly appreciates the Examiner's willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

[0007] During the interview, I discussed how the claims differed from the cited references, namely Pawlak and IBM. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

[0008] I understood the Examiner to agree that further claim amendments directed to clarification of the terms used would be considered.

[0009] Applicant herein amends the claims in response to the discussion and the Examiner's remarks in reply to the prior Office Action. Accordingly, Applicant submits that the pending claims as currently amended are allowable over the cited references of record for at least the reasons discussed during the interview and the reasons presented herein.

Formal Request for an Interview

[0010] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can discuss this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0011] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

Claim Amendments

[0012] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1-23, 25, 29-39, and 44-53 herein. Applicant amends claims to clarify claimed features. Such amendments are made to expedite prosecution and to more quickly identify allowable subject matter. Such amendments are merely intended to clarify the

claimed features, and should not be construed as further limiting the claimed invention in response to the cited references.

Substantive Matters

Claim Rejections under §§ 102 and 103

[0013] Examiner rejects claims 1-12 and 17-53 under § 102. For the reasons set forth below, the Examiner has not shown that the cited references anticipate the rejected claims.

[0014] In addition, the Examiner rejects claims 1 and 13-16 under § 103. For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious.

[0015] Accordingly, Applicant respectfully requests that the § 102 and § 103 rejections be withdrawn and the case be passed along to issuance.

[0016] The Examiner's rejections are based upon the following references alone in combination:

- **Pawlak:** *Pawlak, et al.*, US Patent No. 6,785,885 (issued August 31, 2004); and
- **IBM:** *IBM, et al.*, US Patent Publication No. 2007/5938503 (Published August 31, 2007).

Overview of the Application

[0017] The Application describes a technology for applying software updates to one or more client computers. The one or more client computers are assigned a level of service governing aspects of the application of the updates,

and application of the software updates is scheduled according to the level of service.

Cited References

[0018] The Examiner cites Pawlak and IBM in the anticipation rejections. The Examiner cites Pawlak and Official Notice in the obviousness-based rejections.

Pawlak

[0019] Pawlak describes a technology for applying software updates using Microsoft Software Update Service (SUS), a precursor to the subject of the instant application.

IBM

[0020] IBM describes a technology for communication over a network using an IBM RS/6000.

Anticipation Rejections

[0021] Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.¹ Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.²

Based upon Pawlak

[0022] The Examiner rejects claims 1-12, 17-33 and 40-53 under 35 U.S.C. § 102(a) as being anticipated by Pawlak. Applicant respectfully traverses this rejection. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

Independent Claim 1,

[0023] Applicant submits that Pawlak does not anticipate this claim because it does not show or disclose at least the following elements as recited in this claim, as amended (with emphasis added):

- “assigning by the server computer, **a level of service** to each of a plurality of client computers”

¹ “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

² See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

- “scheduling, **by the server computer**, performance of software updates to a particular client computer from among the plurality of client computers **according to the level of service assigned** to the particular client computer”
- “initiating, **by the server computer**, execution of the software updates to the particular client computer, **according to the schedule**

[0024] Specifically, Pawlak explicitly discloses the inability to distinguish one client computer from another

“... package approval and distribution is an enterprisewide action.” (Pawlack pg. 6)

“...a package cannot be marked for distribution to a single site or to a subset of computers.” (Pawlack pg.6)

“... SUS packages are automatically targeted at all computers whose agents are configured for that SUS server” (Pawlack pg.5)

“...SUS is not granular enough to distribute different sets of patches to each client.” (Pawlack pg 2)

[0025] Claim 1 distinguishes one client computer from another based upon a level of service. Pawlak cannot distinguish one client from another. Therefore

Pawlak cannot disclose, "assigning...a level of service to each of a plurality of client computers," "scheduling...performance of software updates...according to the level of service," or "execution of the software updates according to the schedule," as claimed.

[0026] Consequently, Pawlak does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 2-12 and 17-28

[0027] These claims ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claims 29 and 30

[0028] Applicant submits that Pawlak does not anticipate these claims because it does not show or disclose at least the following element as recited in claim 29, as amended (and similarly in claim 30) (with emphasis added):

- "providing a user interface to allow selection of a time for the client computer to perform the installation of the software update and to allow selection of a time for the client computer to initiate a reboot,

wherein the time selected is based in part on a **level of service** assigned to the client computer by the server computer

[0029] Specifically, Pawlak explicitly discloses the inability to distinguish one client computer from another

“... package approval and distribution is an enterprisewide action.” (Pawlack pg. 6)

“...a package cannot be marked for distribution to a single site or to a subset of computers.” (Pawlack pg.6)

“... SUS packages are automatically targeted at all computers whose agents are configured for that SUS server” (Pawlack pg.5)

“...SUS is not granular enough to distribute different sets of patches to each client.” (Pawlack pg 2)

[0030] Claims 29 and 30 distinguish one client computer from another based upon a level of service. Pawlack cannot distinguish one client from another. Therefore, Pawlak does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

Dependent Claims 31-33

[0031] These claims ultimately depend upon independent claim 30. As discussed above, claim 30 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claims 34 and 35,

[0032] Applicant submits that Pawlak does not anticipate these claims because it does not show or disclose the following elements as recited in this claim, as amended (with emphasis added):

- “associating client computers into groups”
- “establishing a change time-window for each of the groups
- initiating, by the server computer, software updates to the client computers within the change time-window established for each group of client computers
- monitoring by the server computer a failsafe timeout for each update

[0033] Specifically, Pawlak explicitly discloses the inability to distinguish one client computer from another

“... package approval and distribution is an enterprisewide action.” (Pawlack pg. 6)

“...a package cannot be marked for distribution to a single site or to a subset of computers.” (Pawlack pg.6)

“... SUS packages are automatically targeted at all computers whose agents are configure for that SUS server” (Pawlack pg.5)

“...SUS is not granular enough to distribute different sets of patches to each client.” (Pawlack pg 2)

[0034] Claims 34 and 35 distinguish one client computer from another based upon groups. Pawlack cannot distinguish one client from another. Consequently, Pawlack does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

Dependent Claims 36-38

[0035] These claims ultimately depend upon independent claim 35. As discussed above, claim 35 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 39

[0036] Applicant submits that Pawlak does not anticipate this claim because Pawlak does not show or disclose the following elements as recited in this claim, as amended (with emphasis added):

- “grouping a plurality of software updates into a package”
- “configuring the package for differential enforcement, wherein different client computers are assigned by the server different periods of time within which a software update will be initiated
- configuring the package for SMS consumption

[0037] Pawlak explicitly discloses distribution of a plurality of packages sequentially, not the “grouping a plurality of software updates into a package” as claimed.

“...the AU automatically uses Microsoft’s QCHAIN utility to install them [Individual Patches] sequentially ...” (Pawlak pg.4)

[0038] Pawlak explicitly discloses the inability to distinguish one client computer from another

“... package approval and distribution is an enterprisewide action.” (Pawlack pg. 6)

“...a package cannot be marked for distribution to a single site or to a subset of computers.” (Pawlack pg.6)

“... SUS packages are automatically targeted at all computers whose agents are configure for that SUS server” (Pawlak pg.5)

“...SUS is not granular enough to distribute different sets of patches to each client.” (Pawlack pg 2)

[0039] Claim 39 distinguishes one client computer from another based upon groups. Pawlack cannot distinguish one client from another.

[0040] Furthermore, Pawlak explicitly discloses incompatibility with SMS and not “configuring a package for consumption by SMS” as claimed:

“... there is no integration between SMS and SUS..” (Pawlak pg 5).

[0041] Consequently, Pawlak does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Claims 40-43

[0042] Claims 40-43 are canceled herein, rendering the rejection of these claims moot.

Independent Claims 44 and 45,

[0043] Applicant submits that Pawlak does not anticipate these claims because it does not show or disclose the following elements as recited in this claim, as amended (with emphasis added):

- forming a package with a plurality of software updates
- partitioning the package to divide trusted updates from un-trusted updates
- distributing the package to a plurality of client computers, such that appropriate software updates are installed on each of the plurality of clients, wherein the un-trusted software updates are installed only on client computers configured by the server to install un-trusted software updates

[0044] Specifically, Pawlak discloses the inability to distinguish one client computer from another

“... package approval and distribution is an enterprisewide action.” (Pawlak pg. 6)

“...a package cannot be marked for distribution to a single site or to a subset of computers.” (Pawlak pg.6)

“... SUS packages are automatically targeted at all computers whose agents are configure for that SUS server” (Pawlak pg.5)

“...SUS is not granular enough to distribute different sets of patches to each client.” (Pawlack pg 2)

[0045] Claims 44 and 45 distinguish one client computer from another based upon their configuration to run un-trusted packages. Pawlack cannot distinguish one client from another. Consequently, Pawlack does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

Dependent Claims 46-48

[0046] These claims ultimately depend upon independent claim 45. As discussed above, claim 45 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claims 49 and 50,

[0047] Applicant respectfully traverses the current rejection of claims 49 and 50. In the current office action claims 49 and 50 are rejected based upon a reference to Pawlak A.1. as disclosing the claimed feature “using a reference computer to generate a template”. Applicant fails to find any reference to a

"reference computer" or "generate a template" in Pawlak A.1 or any other location within Pawlak.

[0048] Consequently, Pawlak does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims

Dependent Claims 51-53

[0049] These claims ultimately depend upon independent claim 50. As discussed above, claim 50 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Based upon IBM AS/6000 ATM Cookbook

[0050] The Examiner rejects claims 34-39 under 35 U.S.C. § 102(b) as being anticipated by IBM. Applicant respectfully traverses this rejection. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

Independent Claims 34, 35, and 39

[0051] Applicant respectfully traverses the current rejection of claims 34, 35, and 39. In the current office action the Examiner indicates that these claims

are rejected based upon a reference to IBM. Applicant fails to find any reference to the claimed features at the cited locations or at any other location within the cited reference. Applicant understand the cited references to describe the configuration and workings of the ATM network protocol as it is implemented upon an IBM AS/6000 Mainframe computing system. The reference does not relate to the subject matter, or read on the claims of the instant application.

[0052] Consequently, IBM AS/6000 ATM Cookbook does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

[0053] If the Examiner maintains the rejection of these claims, Applicant respectfully requests that the Examiner cite specific portions of the reference and explain how the reference is being used to reject the claimed elements.

Dependent Claims 36-38

[0054] These claims ultimately depend upon independent claim 35. As discussed above, claim 35 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Obviousness Rejections

Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)

[0055] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

Based upon Pawlak

[0056] The Examiner rejects claims 13-16 under 35 U.S.C. § 103(a) as being unpatentable over Pawlak. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

Dependent Claims 13-16

[0057] These claims ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Based upon Official Notice

[0058] The Examiner rejects claim 1 under 35 U.S.C. § 103(a) as being unpatentable by manual act. Applicant respectfully traverses the rejection of this claim and asks the Examiner to withdraw the rejection of this claim.

[0059] Applicant submits that claim 1, as currently amended, recites features executable by a server computer with a processor reading processor readable instructions. Manual acts as cited via Official Notice in section 8 of the current Action do not disclose the claimed features. Consequently, the rejection of claim 1 under 103(a) is moot and applicant requests the Examiner to withdraw the rejection under 103(a).

[0060] Claim 1 claims:

A processor-readable medium encoded with executable instructions that, when executed, direct a server computer to perform a method for updating client computer software, the method comprising: assigning, by the server computer, a level of service to each of a plurality of client computers...

[0061] Applicant respectfully traverses the Official Notice taken in the current action at Page 14 Section 8. The Examiner takes official notice that:

“manual acts have preformed the software update according to the level of service and the update is preformed on a schedule.”


[0062] "A processor-readable medium" as recited in claim 1 does not constitute a "manual act". Accordingly, Applicant respectfully requests that the 103 rejection of claim 1 be withdrawn.

Conclusion

[0063] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me or my assistant at your convenience.

Respectfully Submitted,

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